

**CITY OF EL MONTE**

**August 2009 Amendment to  
City Manager Employment Agreement  
(James W. Mussenden)**

This August 2009 Amendment to City Manager Employment Agreement (the "August 2009 Amendment") is dated as of August 18, 2009, by and between the City of El Monte, a municipal corporation (the "City") and James W. Mussenden, an individual (the "City Manager") and is entered into in light of the facts set forth in the following recital paragraph.

**--RECITALS--**

(A) The City and the City Manager have previously entered into an agreement entitled "City Manager Employment Agreement", dated January 29, 2006 as amended by an instrument by and between the City and the City Manager entitled "January 2009 Amendment". Collectively, the City Manager Employment Agreement and the January 2009 Amendment are referred to in this August 2009 Amendment, as the "City Manager Employment Agreement";

(B) The City and the City manager each believe that it is appropriate to extend the term of the City Manager Agreement to a new date, as set forth in this August 2009 Amendment;

(C) In light of the severe national economic recession which began in 2008 and the specific adverse and continuing negative economic impacts of the 2008 national recession on the City, the City Manager has proposed a further voluntary reduction of his annual salary under the City Manager Agreement as set forth herein in this August 2009 Amendment.

NOW THEREFORE, THE CITY AND THE CITY MANAGER HEREBY COVENANT, AGREE AND PROMISE AS FOLLOWS:

Section 1-1. The text of the City Manager Agreement is hereby incorporated by this reference into this August 2009 Amendment. As of the date of this August 2009 Amendment, the City Manager Agreement is in full force and effect.

Section 2-1. The provisions of Section 4(A)(1)(e) of the City Manager Agreement are hereby amended to read as follows:

"(c) Subject to the provisions of Section 4(A)(1)(f), commencing with the City payroll period beginning on February 1, 2009, the City Manager has voluntarily agreed to reduce his annual salary amount, as set forth in Section 4(A)(1)(a), for the calendar year beginning on January 1, 2009, by an amount equal to ten percent (10%) of his total annual salary amount as set forth in Section 4(A)(1)(a) for the calendar year ending December 31, 2008"

*CC meeting  
8-18-09  
10.01*

Section 3-1. The provisions of Section 4 of the City Manager Agreement are hereby amended to add a new subsection 4(B)(4)(f) to read as follows:

“(f) Commencing on the pay period beginning on July 1, 2009 and for each pay period thereafter, the City Manager shall contribute the sum of Two Hundred Dollars (\$200) per month to the cost otherwise payable by the City for the PERS Health Medical insurance amount under Section 4(B)(4)(a).”

Section 4-1. The provisions of Section 5(C) of the City Manager Agreement are hereby amended to read as follows:

“C. Public Agency Retirement System (PARS)

- (1) The City Manager shall also be entitled to 1% at 55 years of age for each year of City of El Monte service provided the City Manager is (a) at least fifty (50) years of age, (b) is granted a service retirement by CalPERS, (c) is not terminated for cause as defined herein and (d) has at least five (5) years of employment with the City in any position.
- (2) Commencing with the pay period beginning on July 1, 2009 and for each pay period thereafter, the City Manager shall contribute a sum equal to five percent (5%) of his monthly base salary (as of December 31, 2008) to the cost otherwise payable by the City for the retirement benefit made available to the City Manager under Section 5(C)(1)”.

Section 5-1. Section 7(A) of the City Manager Agreement is hereby amended to read as follows:

“A. Term. The effective date of this Agreement shall be July 1, 2006. Subject to the City’s right to terminate the City Manager’s employment, the term of this Agreement is six (6) years from the effective date. If the City Council does not notify the City Manager to extend the City Manager’s employment to a date after June 30, 2012, then the Agreement shall terminate on June 30, 2012.”

Section 6-1. Except as amended by this August 2009 Amendment, all other provisions of the City Manager Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City of El Monte has caused this August 2009 Amendment to be signed on its behalf by its Mayor and duly attested by its City Clerk and the City Manager has signed and executed this August 2009 Amendment both in duplicate as of the day and year first above written.

EMPLOYER, CITY OF EL MONTE

Date: \_\_\_\_\_

By: Ernest G. Gutierrez  
Ernest Gutierrez, Mayor

CITY MANAGER

Date: 8-25-09

By: James W. Mussenden  
James W. Mussenden, City Manager

ATTEST:

Lorene Gutierrez  
Lorene Gutierrez, City Clerk

Date: 8-31-09

APPROVED AS TO FORM:

By: E. Clarke Moseley  
E. Clarke Moseley, City Attorney

Date: 8-25-09

DATE 1/20/09

BENEFIT MASTER UP DATES

PAGE 1

EMP.	N	A	M	E	DEPT	KEY	CODE	DESCRIPTION	USED	UNUSED	
**WAS** **NOW**	<del>2643</del>	DANTE	G	HALL	<del>101</del>	<del>4</del>	<del>L</del>		<del>.00</del> .00	<del>78.00</del> 80.00	<del>CHANGED</del>
**WAS** **NOW**	4620	JAMES	W	MUSSENDEN	101	2	V		.00	1,296.30	CHANGED
						2	V		.00	1,456.30	

ACT	COUNT	BEFORE	AFTER	NET CHG.
ADD UNUSED	0	.00	.00	.00
ADD USED		.00	.00	.00
CHG UNUSED	2	1,366.30	1,536.30	170.00
CHG USED		.00	.00	.00

BENEFIT MASTER UP DATES

DATE 1/20/09

EMP.	N	A	M	E	DEPT	KEY CODE	DESCRIPTION	USED	UNUSED	CHANGED
4620 JAMES	W	MUSSENDEN			101	4	L	.00	70.00	CHANGED
4620 JAMES	W	MUSSENDEN			101	4	L	.00	80.00	CHANGED

\*\*WAS\*\*  
\*\*NOW\*\*

ACT	COUNT	BEFORE	AFTER	NET CHG.
ADD UNUSED	0	.00	.00	.00
ADD USED		.00	.00	.00
CHG UNUSED	1	70.00	80.00	10.00
CHG USED		.00	.00	.00

EMP.	N	A	M	E	DEPT	KEY CODE	DESCRIPTION	USED	UNUSED	
**WAS**	4620	JAMES	W	MUSSENDEN	101	2	V	-00	1,156.30	CHANGED
**NOW**						2	V	.00	1,316.30	
**WAS**	4620	JAMES	W	MUSSENDEN	101	4	L	-00	70.00	CHANGED
**NOW**						4	L	.00	80.00	

ACT	COUNT	BEFORE	AFTER	NET CHG.
ADD UNUSED	0	.00	.00	-00
ADD USED		.00	.00	.00
CHG UNUSED	2	1,226.30	1,396.30	170.00
CHG USED		.00	.00	.00

**CITY OF EL MONTE  
INTERDEPARTMENTAL COMMUNICATION  
ADMINISTRATIVE SERVICES**

For the Meeting of January 20, 2009

To: Mayor Gutierrez and City Council Members

From: James W. Mussenden, City Manager  
Dante G. Hall, Assistant City Manager

Prepared by: E. Clarke Moseley, City Attorney

Subject: Addendum to Employment Agreements for Chief of Police, City Manager and City Attorney

**BACKGROUND:**

The City Council, as consistent with the El Monte Municipal Code, reviews and approves employment agreements for upper management on an as needed basis. With the existing financial crisis not only in our City but the entire State of California, certain measures have been taken by the City to alleviate the budget shortfall which currently exists. As has been mentioned before, the City has not only had to reduced its spending but has also had to reduce the existing budget for each of the City's departments. It has become imperative that other approaches be considered in order to balance our budget and keep our City from the ongoing financial strains. Based upon the above, an adjusted cost reduction package has been prepared for the City Council to review and consider. The cost reduction package consists of addendums to the employment agreements for the City Manager, the City Attorney and the Chief of Police. The specifics of each Agreement are stated below:

**CITY MANAGER EMPLOYMENT AGREEMENT:**

As part of the cost reduction package, the City Manager has consented to a ten percent (10%) reduction in pay for the remainder of his existing Employment Agreement, which is for the period of February 1, 2009 through May 31, 2009.

The proposed reduction in pay beginning on February 1, 2009 will not reduce amount or value of the fringe benefits or other non-salary compensation provided by the City to the City Manager.

**CITY ATTORNEY LEGAL AGREEMENT:**

The existing Employment Agreement of the City Attorney was approved December 5, 2007, extending his employment an additional eighteen (18) months from December 31, 2007 through June 30, 2009. As part of a proposed cost reduction package, the City Attorney has consented to terminate his existing employment contract, effective January 31, 2008 and enter into retirement under the terms of his original employment contract, and continue to provide legal services as to the City under a new legal services/independent contractor agreement.

The prevailing terms of the Independent Contractor Agreement are as follows:

- Fiscal year* →
- A. Section 2 – Term: Term of representation shall be from February 1, 2009 through January 31, 2012. The City Attorney shall not render the aforementioned services in excess of nine hundred and sixty (960) hours per year during any twelve (12) month period during the term of this Agreement.
- B. Section 3 – Compensation and Method of Payment: The City Attorney shall provide the required legal services to the City at a rate of one hundred and twenty five dollars (\$125.00) per hour.
- 10.01*

- C. Section 14 – Termination: Either party may terminate the new legal services agreement upon ninety (90) days prior written notice.

The proposed savings to the City on a yearly basis by having the City Attorney retire early but to and continue to provide certain legal services to the City on an independent legal services contract is estimated at \$150,000.

**DEPUTY CITY MANAGER PUBLIC SAFETY (CHIEF OF POLICE):**

The Employment Agreement of the Deputy City Manager Public Safety (Chief of Police) was approved September 16, 2008. The term of employment shall be from February 1, 2009 through December 31, 2012. The Chief of Police has consented to a ten percent (10%) reduction in pay for a period of six months commencing January 1, 2009 and ending June 31, 2009.

The reduction will consist of the following: (i) \$1,808.50 from his monthly base salary, (ii) \$162.80 from his monthly longevity pay and (iii) \$18.10 from his monthly shooting pay. The total reduction in pay will be \$11,936.40.

The proposed reduction in pay will not reduce the amount or value of the fringe benefits or other non-amended salary compensation provided to by the Deputy City Manager Public Safety (Chief of Police).

**RECOMMENDATION:**

It is recommend that City Council approve the addendums to the employment agreements for the City Manager, the City Attorney and the Chief of Police.

JAN 20 2009

PRESENTED TO EL MONTE CITY COUNCIL	
<input type="checkbox"/>	APPROVED
<input type="checkbox"/>	DENIED
<input type="checkbox"/>	PULLED
<input type="checkbox"/>	RECEIVE AND FILE
<input type="checkbox"/>	CONTINUED
<input type="checkbox"/>	REFERRED TO
CHIEF DEPUTY CITY CLERK	



**CITY OF EL MONTE**  
**January 2009 Amendment to**  
**City Manager Employment Agreement**  
**(James W. Mussenden)**

This January 2009 Amendment to City Manager Employment Agreement (the "January 2009 Amendment"), is dated as of January 20, 2009 by and between the City of El Monte, a municipal corporation (the "City") and James W. Mussenden, an individual (the "City Manager") and is entered into in light of the fact set forth in the following recital paragraphs:

- RECITALS -

(A) The City and the City Manager have previously entered into an agreement entitled "City Manager Employment Agreement" dated January 29, 2006 (the "City Manager Agreement"); and

(B) In light of the severe national economic recession which began in 2008, and the specific adverse and negative economic impacts of the 2008 national recession on the City, the City Manager has proposed to voluntarily reduce his annual salary under the City Manager Agreement by ten percent (10%) as set forth herein; and

(C) In view of the unprecedented suddenness and severity of the national economic recession which began in 2008, the City Manager has requested the City Council to consider this January 2009 Amendment to the City Manager Contract.

NOW THEREFORE, THE CITY AND THE CITY MANAGER COVENANT, AGREE AND PROMISE AS FOLLOWS:

SECTION 1. The text of the City Manager Agreement is hereby incorporated by this reference under this January 2009 Amendment. The City Manager Agreement is in full force and effect.

SECTION 2. The provisions of Section 4 of the City Manager Agreement are hereby amended to add new subsections 4(A)(1)(e) and (f) to read as follows:

- "(e) Subject to the provisions of Section 4(A)(1)(f), commencing with the City payroll period beginning on February 1, 2009, the City Manager has voluntarily agreed to reduce his annual salary amount as set forth in Section 4(A)(1)(a) for the calendar year beginning on January 1, 2009, by an amount equal to ten percent (10%) of his total annual salary amount as set forth in Section 4(A)(1)(a) for the calendar year ending December 31, 2009.
- (f) The provisions of Section 4(A)(1)(e) shall only be applicable to the calculation of the amount of each monthly installment of the annual salary payable to the City Manager each City payroll period occurring on or after February 1, 2009. For the purpose of all other sections of this Agreement, and the computation of the value or amount of all fringe benefits and other elements of compensation not expressly covered as annual salary in Section 4(A)(1)(a), the annual salary of the City

Manager shall be deemed to be the annual salary of the City Manager computed under Section 4(A)(1)(a) without regard to the affect of Section 4(A)(1)(e) after December 31, 2008."

IN WITNESS WHEREOF, the City of El Monte has caused this Addendum Agreement to be signed in its behalf by its Mayor and duly attested by its City Clerk and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

DATED: 1/29/09

EMPLOYER, CITY OF EL MONTE

Ernest Gutierrez  
ERNEST GUTIERREZ, MAYOR

DATED: 3/3/09

EMPLOYEE

James W. Mussenden  
JAMES W. MUSSENDEN, CITY MANAGER

ATTEST:

Lorene Gutierrez  
LORENE GUTIERREZ, CITY CLERK

DATED: 1/29/09

APPROVED AS TO FORM

E. Clarke Moseley  
E. CLARKE MOSELEY  
CITY ATTORNEY

DATED: 1/29/09



Emp # 4620

**CITY MANAGER EMPLOYMENT AGREEMENT  
BY AND BETWEEN THE  
CITY OF EL MONTE  
AND  
JAMES W. MUSSENDEN**

2006 JUL - 3

**1. PARTIES AND DATE**

This Agreement is entered into as of JUNE 29, 2006 by and between the City of El Monte, California, a municipal corporation (the "City"), and James W. Mussenden, an individual (the "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties."

- A. The City requires the services of a City Manager.
- B. The City Council of the City (the "City Council") desires to employ the City Manager to serve as the City Manager of City.
- C. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.
- D. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

**2. EMPLOYMENT**

The City hereby employs the City Manager as its City Manager, and the City Manager hereby accepts such employment.

**3. COMMITMENTS AND UNDERSTANDINGS**

**A. The City Manager's Commitments**

**(1) Duties & Authority**

- (a) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
- (b) The City Manager shall perform all of the duties of the City Manager as set forth in Chapter 2.12 of the El Monte Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time. Any duties set forth in this section shall not supercede the specific duties of a city manager as set forth in EMMC Section 2.12 and in the

event of a conflict, the EMMC shall prevail.

- (c) The City Council may also designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities include acting as Executive Director of the El Monte Community Redevelopment Agency, financing authorities, and joint powers authorities.
- (d) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies.

(2) Hours of Work

- (a) The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager will be available at city hall during standard business hours of operation unless the City Manager is unavailable due to illness, vacation or permitted leave, or City business takes the City Manager elsewhere.
- (b) The City Manager shall exclusively work for and on behalf of the City and shall not teach, consult, speak, or otherwise participate in a non-City connected business for which compensation is paid without the express prior consent of the City Council.

(3) Disability or Inability to Perform

- (a) In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than three (3) months, the City Council may terminate the City Manager. Such termination will be defined as "without cause".

B. City Commitments

Subject to oversight and approval of the City Council:

- (1) The City shall provide the City Manager with the compensation, incentives and benefits, specified elsewhere in this Agreement.
- (2) The City shall provide the City Manager with an office, staff, and facilities for the performance of the City Manager's duties.
- (3) The City shall pay for or provide the City Manager reimbursement for all actual business expenses. The City shall provide the City Manager a City credit card to charge appropriate and lawful business expenses.

- (4) The City agrees to pay the professional dues and subscriptions on behalf of the City Manager, which are necessary for the City Manager's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City.
- (5) The City agrees to pay the travel and subsistence expenses of the City Manager to pursue official and other functions for the City.
- (6) The City also agrees to pay for the travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the good of the City.

C. City Council Commitments

- (1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.
- (2) The City Council recognizes that to meet the challenges facing the City, they must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on setting goals and priorities for the City government.

D. Mutual Commitments

(1) Performance Evaluation

- (a) The City Council recognizes that for the City Manager to respond to its needs and to grow in the performance of the City Manager's job, the City Manager needs to know how the City Council Members evaluate the City Manager's performance.
- (b) The City Council shall conduct an evaluation of the City Manager's performance no less than once each year however it is recognized that performance evaluations may occur several times during each calendar year.

4. COMPENSATION

The City agrees to provide the following compensation to the City Manager during the term of the Agreement:

A. Compensation & Required Employer Costs

(1) Base Salary

- (a) The annual salary for the position of City Manager shall be an annual salary of one hundred fifty thousand dollars (\$150,000) payable at the rate

of twelve thousand five hundred dollars (\$12,500) monthly, effective July 1, 2006. The City shall pay the City Manager for services rendered pursuant hereto a monthly base salary plus nine percent (9%) longevity payments.

↳ 1125<sup>00</sup>/mo

- ✓(b) The City Manager shall be paid at the same intervals and in the same manner as regular City employees.
- (c) The City shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of the City Manager, unless as part of a general City management salary reduction, and then in no greater percentage than the average percentage reduction of all City department heads.
- ✓(d) The City Manager will be covered by the City's Workers' Compensation policy.

## B. Basic Benefits

### (1) Holidays

- (a) The City Manager is entitled to the following eleven (11) paid holidays per calendar year calculated at ten (10) hours per day:
  - (i) ½ Day before New Year's Day
  - (ii) New Year's Day
  - (iii) Martin Luther King Jr.'s Birthday
  - (iv) Presidents' Day
  - (v) Memorial Day
  - (vi) Independence Day
  - (vii) Labor Day
  - (viii) Veteran's Day
  - (ix) Thanksgiving Day
  - (x) ½ Day Before Christmas
  - (xi) Christmas Day
  - (xii) a Floating Holiday determined by the City Manager
- (b) A holiday bank shall be established for the City Manager at the rate of ten (10) hours for each holiday, which occurs during the year to a maximum of one hundred ten (110) hours per year beginning each calendar year. On or about January 20 of each year hereafter, the City Manager will receive a cash payment for all remaining time in the holiday bank at straight time on the base rate. There shall be no carryover of banked hours from one calendar year to another.
- (c) If the City Manager leaves the employ of the City, the City Manager shall be paid a pro-rata amount of unused holiday pay. The City Manager shall be paid all unused holiday pay equivalent to the number of holidays that

occur between January 1 and the date of his termination. For example, if the City Manager leaves effective July 1 and has not been paid holiday pay at all during that calendar year, he will be paid a total of fifty (50) hours of holiday pay for New Year's Day, President's Day, Memorial Day and the floating holiday.

- (d) If the City Manager has exhausted his accrued holiday pay and a holiday occurs, he must use accrued leave in order to be paid on that day. Vacation pay shall be the first used. If the City Manager has no vacation pay, other types of accrued leave may be used. However, the City Manager may not use sick leave to be paid for a holiday. If the City Manager has exhausted all accrued leave balances on a holiday, he will not be paid on that day.

- (e) Holidays falling on Sunday will be observed on the following Monday.

## (2) Leave Allowance

### (a) Vacation Leave:

The City Manager shall be entitled to annual vacation leave of one hundred sixty (160) hours (thirteen and one-third (13⅓) hours per month). Any vacation time which remains unused at the end of the calendar year, shall be carried over to the following year. The City Manager's vacation hours accrued under his prior city position shall be carried over to his newly appointed position of City Manager.

### (b) Sick Leave:

Sick leave shall be accrued at the rate for management employees or as otherwise adjusted for other management employees, accumulated at the rate of ten (10) hours for each calendar month of service. Sick leave shall not be considered as a privilege, but shall be allowed only in case of actual sickness or disability of the City Manager or within the immediate family.

Upon death or upon service retirement, the City Manager shall be paid at the rate of pay in effect upon retirement, for up to one-half (1/2) of all unused accumulated sick leave. The maximum amount and any remainder shall be reported to PERS for retirement purposes.

The City Manager's sick hours accrued under his prior city position shall be carried over to his newly appointed position of City Manager.

The City Manager will be allowed to use up to thirty (30) hours of sick leave per year for the purpose of conducting personal business which must be performed during normal business hours.



(c) Administrative Leave:

The City Manager shall receive eighty (80) hours (six and two-thirds (6⅔) hours per month) of Administrative Leave in each calendar year. Administrative Leave hours cannot be carried over year to year, and shall be lost if not used by the end of each calendar year.

(3) Automobile

The City Manager is on call twenty-four hours per day and shall be given exclusive and unrestricted use of a City automobile except that the City Manager shall not use a City automobile outside of the State of California unless it is expressly and directly related to City authorized business. The City shall be responsible for all insurance, operation, maintenance, and repair of the automobile.

(4) Fringe Benefits

- (a) The City shall contribute the Prevailing 3-Party Kaiser Rate towards the cost of PERS Health medical insurance for the City Manager. If the City Manager does not use the full allotment of medical benefits, the remainder will be paid monthly to the City Manager as taxable cash. If the City Manager can provide to the El Monte Human Resource Division proof of insurance from another source (e.g., through his spouse), then the City Manager may totally drop medical insurance coverage through the City and take the full rate as described in this paragraph as taxable cash.
- (b) The City shall contribute the three party rate for Ameritas insurance towards a dental insurance policy for the City Manager and his eligible dependents. If the City Manager can provide to the Human Resource Division proof of insurance from another source (e.g., through his spouse), then the City Manager may totally drop dental insurance and take the full rate as described in this paragraph as taxable cash.
- (c) The City shall, on a monthly basis, contribute the three party rate for the Vision Services Plan for the City Manager and his eligible dependents. If the City Manager chooses to forego his allotment of vision benefits, the City shall be under no obligation to, and will not, pay the City Manager any cash sum in lieu of such benefits.
- (d) The City shall contribute \$50 per month to the City Manager towards life insurance benefits provided by the City. The basic benefit structure of the City's life insurance plans shall not be reduced during the term of this Agreement.

- (e) The City shall provide Medicare, medical insurance, dental insurance, long term care insurance with inflation protection as offered by PERS and vision insurance to the City Manager upon retirement from the City and to his present spouse. The City shall pay the premium and any subsequent increases for the foregoing insurance in effect at the time of the City Manager's retirement. The City Manager and spouse coverage will continue until voluntary cancellation of the policy or until the death of either the City Manager or spouse and in that event coverage extends separately and individually to both.

### C. Perquisites

Physical Exam/Fitness. In order to foster the City Manager's good health, the City will cover the cost of a full physical exam each year for the City Manager, to be performed by a physician or physicians selected by the City Manager.

## 5. RETIREMENT

### A. Deferred Compensation Plan

The City Manager must join the Deferred Compensation Plan offered by the Public Employees' Retirement System and/or the City's 401(a) plan. The City's contribution to said plan shall be a total of nine (9%) percent of the City Manager's base salary and longevity pay. The amounts contributed to the Plans are subject to the statutory limits outlined in the Codes of the United States Internal Revenue Service. The City Manager may still participate in other City deferred compensation plans (457 Plans) in addition to the Plan offered by the Public Employees' Retirement System.

### B. Public Employees Retirement System (PERS)

For the purposes of PERS reporting, the City shall incorporate into the reported base pay as compensation earnable, but only to the extent, if any, that PERS will consider it to be compensation earnable.

- (1) Contribution Rate: The City Contribution Rate is established by the PERS Board of Administration. The City will contribute the full amount of the City Manager's contribution toward retirement.

#### (2) Additional Retirement Benefits:

- (a) "2% @ 55" formula as adopted by the City for General employees.
- (b) 1959 Fourth Level Survivors Benefits as adopted by the City.
- (c) Fifty Percent (50%) Widow's/Widower's Continuance Benefit as adopted by the City. (G.C. 21263).
- (d) Highest One Year compensation as the period for determining retirement benefits.

- (e) Conversion of Unused Sick Leave toward service credit.
- (f) Post Retirement Survivor's Benefit for continuance of benefits after remarriage.
- (g) Five Percent (5%) Retirement Cost of Living Allowance Maximum.
- (h) Seven Percent (7%) of the normal employee contributions as employer paid member contributions (EPMC) and report same to PERS as compensation.
- (i) Pre-Retirement Optional Settlement 2 Death Benefit.
- (j) Military Service Credit as Public Service.

#### C. Public Agency Retirement System (PARS)

The City Manager shall also be entitled to 1% @ 55 for each year of City of El Monte service provided the City Manager is (a) at least Fifty (50) years of age, (b) is granted a service retirement by CalPERS, (c) is not terminated for cause as defined herein and (d) has at least five (5) years of employment with the City in any position.

#### D. Insurance

##### (1) IRS Section 125C Benefits

The City Manager is eligible for benefits payable under IRS Section 125c. As outlined in the IRS Code, the City Manager may submit certain out of pocket expenses (such as unreimbursed medical expenses and child care expenses) to the Section 125c Administrator appointed by the City. If such out of pocket expenses meet the requirements of the IRS Code, these expenses shall be deducted from the City Manager's gross pay as reported to the IRS thereby lowering the City Manager's total tax liability during the year.

- (2) Long Term Care Benefits: The City shall pay for the comprehensive long-term care program as offered by PERS with inflation protection. Cash in lieu of this benefit will be paid to the City Manager until the next PERS open enrollment for this program. The City shall not be responsible for long-term care benefits after the term of this Agreement unless the City Manager has immediately thereafter retired through PERS.

### 6. TERMINATION AND REMOVAL

- A. Termination: The City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.

The City Council may terminate the City Manager at any time, with or without cause, by at least three (3) City Council Members' votes to do so. Notice of termination shall be provided to the City Manager in writing. Termination as used in this Agreement shall also include request that the City Manager resign, a reduction in salary or other financial benefits of the City Manager (including a

general City Management salary reduction), a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position. Any such termination or act constituting termination shall be undertaken at or effectuated at a duly noticed regular meeting of the City Council.

#### B. Severance Pay

- (1) In the event the City Manager is terminated by the City Council "without cause" during such time that the City Manager is willing and able to perform the City Manager's duties under this Agreement, then in that event the City shall pay the City Manager a lump sum severance amount calculated on the then current base salary and longevity pay of the City Manager. The severance amount shall be equal to six (6) months or the number of months remaining on the City Manager's agreement whichever is the lesser of the two. In addition, the City shall pay the health and other insurance premiums for benefits enjoyed by the City Manager for the severance period. If the City Manager retired immediately thereafter, he shall be eligible for all benefits listed in Section 4.B.(4)(e). However, there shall be no duplication of health insurance premiums during this period.
- (2) Upon death or upon service retirement, the City Manager or his beneficiaries shall be paid at the rate of pay in effect upon retirement, for one-half (1/2) of all unused accumulated sick leave. The maximum amount and any remainder shall be reported to PERS for retirement purposes.
- (3) Upon death or upon service retirement, the City Manager or his beneficiaries shall be paid at the rate of pay in effect upon retirement, for all unused accumulated vacation leave.
- (4) In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances and any benefits included in Section 4.B.(4)(e).

#### C. Resignation

- (1) In the event that the City Council formally or a majority of the City Council informally asks the City Manager to resign, then the City Manager shall be entitled to resign and still receive the severance benefits provided in Section 6.B. above.
- (2) In the event, the City Manager voluntarily resigns his position with the City before expiration of the term of his employment, the City Manager shall give the City at least sixty (60) days' written notice in advance unless the parties otherwise agree in writing.

#### D. Separation for Cause

- (1) Notwithstanding the provisions of Section 6.B., the City Manager may be terminated for cause. As used in this section, "cause" shall mean only one or more the following:
  - (a) Conviction of a felony;
  - (b) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the City Manager's duties;
  - (c) Repeated and protracted unexcused absences not otherwise authorized by this Agreement from the City Manager's office and duties; or
  - (d) The City Manager has committed any offense involving a violation of his official duties or has misappropriated
- (2) In the event the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination and such other termination benefits and payments as may be required by law. The City Manager shall in such event not be entitled to any severance benefits provided by Section 6.B.

### 7. MISCELLANEOUS PROVISIONS

- A. Term: The effective date of this Agreement shall be July 1, 2006. Subject to the City's right to terminate the City Manager's employment, the term of this Agreement is three (3) years from the effective date, and may be renewable for successive one (1) year periods provided the City Council notifies the City Manager in writing of its intent to extend this Agreement at least six (2) months prior to the end of the three (3) year initial term or any successive one (1) year terms. If the City Council does not notify the City Manager to extend or terminate the City Manager's employment then the existing agreement shall terminate at the end of the agreement period.
- B. Provisions that Survive Termination: Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City. This section, and the others so intended, shall survive termination of employment and termination of this Agreement.
- C. Amendments: This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

#### D. Conflict of Interest

- (1) The City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.
- (2) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.
- (3) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

#### E. Indemnification

- (1) The City and the El Monte Community Redevelopment Agency, jointly and severally, shall defend, save harmless, and indemnify the City Manager against and for all losses sustained by the City Manager in direct consequence of the discharge of the City Manager's duties on the City's behalf for the period of the City Manager's employment.

#### F. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

#### G. Previous Assistant Manager Agreement

It is acknowledged that the James Mussenden is currently employed under an Employment Agreement dated November 1, 2004. This Employment Agreement is terminated as of the effective date of entered the City Managers Agreement, except that any provisions intended to be extended beyond the termination of the Employment Agreement dated November 1, 2004 shall survive.

H. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Los Angeles County, State of California.

I. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

J. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Manager or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

- (1) If to the City: Mayor and Members of the City Council, City of El Monte, 11333 Valley Boulevard, El Monte, CA 91731.
- (2) If to the City Manager: Mr. James Mussenden, City of El Monte, 11333 Valley Boulevard, El Monte, CA 91731.

8. EXECUTION

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

"City"

"City Manager"

CITY OF EL MONTE

A Municipal Corporation

By: Ernie G. Gutierrez  
Ernie G. Gutierrez, Mayor

By: James W. Mussenden  
James W. Mussenden

ATTEST:

By: Lorene Gutierrez  
Lorene Gutierrez, City Clerk

APPROVED AS TO FORM:

By: E. Clarke Moseley  
E. Clarke Moseley, City Attorney



4620 JAMES W MUSSSENDEN SS# 560782557 CA 91740 PH. 626 9147861  
963 SANDSTONE DRIVE GLENDORA

PAY BY - S RATE - 1250000  
SEX - M M OR S - M TIME - F  
FIRE - R PERS% - 7 STY - N  
W/C - 9410 RRG - STEP - 5 STA. DEP. AMOUNT  
MEDCAR - N PST - N EXMPT - N M 1

BIRTH HIRED ANNUARY PROMO. PT DATE LONG.DAT BENEFIT  
060650 030883 040183 091001 000000 040183 040183

LONGVITY - 12500 EDUC - EMT - EXTRA GROSS PAY -  
CAR K - 9 - SHIFT - MISC. - INS.REB - 50722  
C/P LTC - 3408

ACCOUNT AMOUNT ACCOUNT AMOUNT ACCOUNT AMOUNT  
12800100 816010 27000100 313850 31000100 125540  
13805701 50722 43805709 3408

Cmd-2 Select another employee (no update). Enter Updates record.

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